

BRB No. 11-0715 BLA

MARY WORLEY)	
(Widow of WILLIAM WORLEY))	
)	
Claimant-Respondent)	
)	
v.)	
)	
PEABODY COAL COMPANY)	DATE ISSUED: 07/19/2012
)	
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Summary Decision Awarding Benefits of Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer.

Emily Goldberg-Kraft (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Summary Decision Awarding Benefits (11-BLA-5816) of Administrative Law Judge Michael P. Lesniak (the administrative law judge) rendered on

a survivor's claim¹ filed pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §§921(c)(4) and 932(l)) (the Act).

On March 23, 2010, amendments to the Act, affecting claims filed after January 1, 2005, that were pending on or after March 23, 2010, were enacted. *See* Section 1556 of the Patient Protection and Affordable Care Act (PPACA), Public Law No. 111-148 (2010). The amendments, in pertinent part, revive Section 422(l) of the Act, 30 U.S.C. §932(l), which provides that the survivor of a miner who was eligible to receive benefits at the time of his or her death is automatically entitled to survivor's benefits, without having to establish that the miner's death was due to pneumoconiosis. 30 U.S.C. §932(l).

On June 2, 2011, the Director, Office of Workers' Compensation Programs (the Director), filed a Motion for Summary Decision and argued that, under amended Section 932(l), and given the filing date of her claim, claimant was entitled to benefits based on the award of benefits to her deceased husband.² Employer filed an Opposition to Motion for Summary Decision, challenging the constitutionality of amended Section 932(l) and its applicability to the instant claim.

The administrative law judge found that claimant is an eligible survivor of the miner, and that claimant meets the eligibility criteria for automatic entitlement to benefits pursuant to amended Section 932(l). Accordingly, the administrative law judge awarded survivor's benefits, commencing as of September 1, 2009.

On appeal, employer argues that the retroactive application of the automatic entitlement provisions of amended Section 932(l) to this claim constitutes a violation of its due process rights and, as such, is unconstitutional.³ Employer also argues that the operative date for determining eligibility pursuant to amended Section 932(l) is the date

¹ Claimant, Mary Worley, is the widow of the miner, who died on September 26, 2009. Director's Exhibit 10. Claimant filed her claim for survivor's benefits on October 29, 2009. Director's Exhibit 3.

² At the time of his death, the miner was receiving federal black lung benefits pursuant to an award contained in a Decision and Order on Remand issued on June 27, 1994 by Administrative Law Judge Robert S. Amery. Director's Exhibit 1.

³ Employer's argument, that further proceedings or actions related to this claim should be held in abeyance pending resolution of the constitutional challenges to the Patient Protection and Affordable Care Act, is moot. *See Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. , 2012 WL 2427810 (June 28, 2012).

of filing of the miner's claim, not the date of filing of the survivor's claim. Claimant has not filed a response to employer's appeal. The Director responds, urging the Board to affirm the administrative law judge's award of benefits.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this cases arises,⁴ recently upheld the Board's holding in *Stacy v. Olga Coal Co.*, 24 BLR 1-207 (2010), that the operative date for determining eligibility for survivor's benefits under amended Section 932(l) is the date that the survivor's claim was filed, not the date that the miner's claim was filed. *West Virginia CWP Fund v. Stacy*, 671 F.3d 378, 25 BLR 2-65 (4th Cir. 2011), *pet. for cert. pending*, No. 11-1342. For the reasons set forth in *Stacy*, we reject employer's arguments to the contrary. We also reject employer's contention that retroactive application of the automatic entitlement provisions of amended Section 932(l) constitutes a due process violation, for the same reasons the Board rejected substantially similar arguments in *Mathews v. United Pocahontas Coal Co.*, 24 BLR 1-193, 1-200 (2010), *recon. denied*, BRB No. 09-0666 BLA (Apr. 14, 2011) (Order) (unpub.), *appeal docketed*, No. 11-1620 (4th Cir. June 13, 2011). *See also Keene v. Consolidation Coal Co.*, 645 F.3d 844, 24 BLR 2-385 (7th Cir. 2011); *B & G Constr. Co. v. Director, OWCP [Campbell]*, 662 F.3d 233, 25 BLR 2-13 (3d Cir. 2011).

Because claimant filed her survivor's claim after January 1, 2005, her claim was pending on March 23, 2010, and the miner was receiving benefits under a final award at the time of his death, we affirm the administrative law judge's finding that claimant is entitled to receive survivor's benefits pursuant to amended Section 422(l) of the Act, 30 U.S.C. §932(l).

⁴ As the miner's last coal mine employment occurred in West Virginia, the Board will apply the law of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 1.

Accordingly, the Decision and Order Awarding Benefits of the administrative law judge is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge